SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1849.

No. 208.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

DANIEL H. BROMLEY.

In error to the circuit court of the United States, for the northern district of New York.

INDEX.

	Original.	Print.
Writ of error to circuit court	1	2
Clerk's certificate	2	2
Citation and service	3	3
Writ of error to district court	4	3
Proceedings of district court	6	4
Declaration	6	5
Issues joined	17	13
Judgment of district court	18	13
Bill of exceptions	18	13
Proceedings in circuit court	26	18
Judgment	27	19

GIDEON, Printer.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the [L. S.] circuit court of the United States, for the second circuit and northern district of New York, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court, between the United States of America and Daniel H. Bromley, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, at Washington, the second Monday of January, in the year of our Lord one thousand eight hundred and forty-nine.

ANSON LITTLE,
Clerk.
G. W. CLINTON,
U. S. Attorney.

Circuit court of the United States, for the northern district of New York, in the second circuit.

DANIEL H. BROMLEY
ads.
THE UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF NEW YORK, *ss.*

I, Anson Little, clerk of the circuit court of the United States of America, for the northern district of New York, in the second circuit, do hereby certify to the Supreme Court of the United States, that the judgment, record, bill of exceptions, and assignment of errors, hereunto annexed, are true transcripts of their respective originals remaining on the files of my office in the above entitled cause.

In testimony whereof I have hereunto subscribed my name and af- [L. S.] fixed the seal of the said circuit court, this thirtieth day of April, one thousand eight hundred and forty nine.

ANSON LITTLE.

UNITED STATES OF AMERICA, ss.

To Daniel H. Bromley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the second circuit and northern district of New York, wherein the United States of America is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, the second Monday of January, in the year of our Lord one thousand eight hundred and forty-nine.

ALFRED CONKLING,
Judge of the U. S. for the northern district of New York.

Supreme Court of the United States.

DANIEL H. BROMLEY, defendant in error, ads.
THE UNITED STATES OF AMERICA, plaintiff in error.

I, Robert Haight, attorney of the defendant in error in the court below, do hereby admit due service of the above citation, by the exhibition of the original, and delivery of a copy thereof to me this day.

Dated Rochester, April 27th, 1849.

R. HAIGHT,
Att'y for deft. in error.

Pleas in the circuit court of the United States of America, in the second circuit, in and for the northern district of New York, at Albany, of the term of October, in the year eighteen hundred and forty-seven.

Witness the honorable Roger B. Taney, chief justice.

A. LITTLE, *Clerk.*

The President of the United States of America has sent to the judge of the district court of the United States, for the northern district of New York, his writ close, in these words, to wit:

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the judge of the district court of the United States, for the northern district of New York, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said district court of the [L. S.] United States, for the northern district of New York, before you, between the United States of America and Daniel H. Bromley, a mani-

fest error hath happened, to the great damage of the said United States of America, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and plainly, you send the record and proceedings aforesaid, with all things concernings the same, to the circuit court of the United States, for the second circuit and northern district of New York, together with this writ, so that you have the same at Albany, in the said district, on the third Tuesday of October next, in the said circuit court to be then and there held; that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Canandaigua, in said district, this twenty-second day of June, in the year of our Lord one thousand eight hundred and forty-seven.

ANSON LITTLE, *Clerk.*
G. W. CLINTON,
U. S. Attorney.

And now at this day, that is to say, the third Tuesday of October, in this same term, before the judges of the said circuit court of the United States, in the second circuit and northern district of New York aforesaid, at Albany, in the said district, came as well the said United States, by George W. Clinton, their attorney for the said district, as the said Daniel H. Bromley, by Robert Haight, esquire, his attorney. And the honorable Alfred Conkling, the judge aforesaid, hath returned here before the judges aforesaid the said writ close, to him directed as aforesaid, together with the record and proceedings therein mentioned, according to the exigency of the said writ; which return follows in these words, that is to say:

To the judges of the circuit court of the United States, for the northern district of New York, in the second circuit.

The return to this writ appears by the schedule thereunto annexed, consisting of the judgment, record, and a bill of exceptions thereto tacked.

The answer of the judge of the district court of the United States, in and for the northern district of New York.

[L. S.] AURELIAN CONKLING,
Clerk of the district court of the United States for the northern district of New York.

District court of the United States, for the northern district of New York.

Pleas before the judge of the district court of the United States, for the northern district of New York, at Rochester, of the term of May, one thousand eight hundred and forty-six.

NORTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered that, on the third Tuesday of May, in this same term, at Rochester, comes the United States of America by William F. Allen, their attorney for the said district, and being now here, before the said judge, their certain bill against Daniel H. Bromley, in custody, &c., of a plea of debt, and which said bill follows in these words, that is to say:

NORTHERN DISTRICT OF NEW YORK, *ss.*

The United States of America, plaintiffs in this suit, by William F. Allen, their attorney in and for the northern district of New York, complain of Daniel H. Bromley, defendant in this suit, in custody, &c., of a plea that the said defendant render to the said plaintiffs the sum of five hundred dollars, which he owes to and unjustly detains from them.

For that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Rochester, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed under the authority of the Post Office department, to wit, between Albion, in the said northern district of New York, and Rochester, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat, as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Albion and Rochester, as aforesaid, the said United States' mail then and there being regularly conveyed, as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters; the said letters, packets, and packages of letters then and there being mailable matter, other than newspapers, pamphlets, magazines, or periodicals; and which said letters, packets, and packages of letters did not, nor did any or either of them have relation to any part of the cargo of the said packet boat from one to the other of the said places, from one to the other of which said places the said United States' mail was then and there regularly conveyed, as aforesaid, under the authority of the Post Office department, to wit, from Albion aforesaid, to Rochester aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845; whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath ac-

crued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, part and parcel of the said sum of five hundred dollars, above demanded.

And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Rochester, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed, under the authority of the Post Office department, to wit, between Albion, in the said northern district of New York, and Rochester, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Albion and Rochester as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters; the said letters, packets, and packages of letters then and there being mailable matter other than newspapers, pamphlets, magazines, or periodicals; and which said letters, packets, and packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat from one to the other of the said places, from one to the other of which said places, the said United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Albion aforesaid to Rochester aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845, whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars, above demanded.

And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Rochester, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed under the authority of the Post Office department, to wit, between Rochester, in the said northern

district of New York, and Albion, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Rochester and Albion as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters, the said letters, packets, and packages of letters then and there being mailable matter, other than newspapers, pamphlets, magazines or periodicals; and which said letters, packets, and packages of letters did not, nor did any or either of them have relation to any part of the cargo of the said packet boat, from one to the other of the said places, from one to the other of which said places the United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Rochester aforesaid to Albion aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845, whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars above demanded.

4th count. And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Rochester, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed under the authority of the Post Office department, to wit, between Rochester, in the said northern district of New York, and Albion, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Rochester and Albion as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters,

packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters; the said letters, packets, and packages of letters, then and there being mailable matter, other than newspapers, pamphlets, magazines or periodicals; and which said letters, packets, and packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat from one to the other of the said places; from one to the other of which said places the said United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Rochester aforesaid to Albion aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845; whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars above demanded.

5th count. And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Rochester, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed under the authority of the Post Office department, to wit, between Rochester, in the said northern district of New York, and Lockport, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform said trips at stated periods between the said places of Rochester and Lockport as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters, the said letters, packets, and packages of letters then and there being mailable matter, other than newspapers, pamphlets, magazines or periodicals; and which said letters, packets, and packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat from one to the other of the said places, from one to the other of which said places the said United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Rochester aforesaid to Lockport aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled

"An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845, whereby and by force of the said statute the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs, to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars above demanded.

6th count. And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Lockport, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed under the authority of the Post Office department, to wit, between Lockport, in the said northern district of New York, and Rochester, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Lockport and Rochester as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters, the said letters, packets, and packages of letters then and there being mailable matter, other than newspapers, pamphlets, magazines, or periodicals; and which said letters, packets, or packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat, from one to the other of the said places, from one to the other of which said places the said United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Lockport aforesaid to Rochester aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845; whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to the said plaintiffs in the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars above demanded.

7th count. And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Rochester, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed under the authority of the Post Office department, to wit, between Rochester, in the said northern district of New York, and Buffalo, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Rochester and Buffalo as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters, the said letters, packets, and packages of letters then and there being mailable matter, other than newspapers, pamphlets, magazines, or periodicals, and which said letters, packets, and packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat from one to the other of the said places, from one to the other of which said places the said United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Rochester aforesaid to Buffalo aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845, whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars above demanded.

8th count. And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Buffalo, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two cities, from one to the other of which said places the United States' mail was then and there regularly conveyed under the authority of the Post Office department, to wit, between Buffalo, in the said northern district of New York, and Rochester, also in the said district; and the said packet boat, and the said defendant, so being

such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said cities of Buffalo and Rochester as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said cities, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters, the said letters, packets, and packages of letters then and there being mailable matter, other than newspapers, pamphlets, magazines, or periodicals, and which said letters, packets, and packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat from one to the other of the said cities, from one to the other of which said cities the said United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Buffalo aforesaid to Rochester aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845, whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars above demanded.

9th count. And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Albion, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed, under the authority of the Post Office department, to wit, between Albion, in the said northern district of New York, and Buffalo, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Albion and Buffalo as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters, the said letters, packets, and packages of letters

then and there being mailable matter, other than newspapers, pamphlets, magazines, or periodicals, and which said letters, packets, and packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat from one to the other of the said places, from one to the other of which said places the said United States' mail was then and there regularly conveyed as aforesaid, under the authority of the Post Office department, to wit, from Albion aforesaid to Buffalo aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845, whereby, and by force of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars, above demanded.

10th count. And also for that whereas heretofore, to wit, on the first day of May, one thousand eight hundred and forty-six, at Albion, in the said northern district of New York, the said defendant was the captain of a certain packet boat, to wit, the packet boat Empire, which said packet boat did then and there regularly perform trips at stated periods between two places, from one to the other of which said places the United States' mail was then and there regularly conveyed, under the authority of the Post Office department, to wit, between Albion, in the said northern district of New York, and Rochester, also in the said district; and the said packet boat, and the said defendant, so being such captain of the said packet boat, as aforesaid, and the managers, servants, and crews of the said packet boat, did then and there, while the said defendant was such captain thereof, and while the said packet boat did then and there regularly perform trips at stated periods between the said places of Albion and Rochester as aforesaid, the said United States' mail then and there being regularly conveyed as aforesaid, under the authority of the Post Office department, from one to the other of the said places, transport and convey, otherwise than in the mail, divers letters, packets, and packages of letters, to wit, ten letters, ten packets, and ten packages of letters, the said letters, packets, and packages of letters then and there being mailable matter, other than newspapers, pamphlets, magazines, or periodicals, and which said letters, packets, and packages of letters did not, nor did any or either of them, have relation to any part of the cargo of the said packet boat, from one to the other of the said places, from one to the other of which said places the said United States' mail was then and there regularly conveyed, as aforesaid, under the authority of the Post Office department, to wit, from Albion aforesaid to Rochester aforesaid, contrary to the true spirit, meaning, and intent of the act of Congress, entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post Office department," passed March 3, 1845; whereby, and by force

of the said statute, the said defendant did then and there forfeit and become liable to pay to the said plaintiffs the sum of fifty dollars; by means whereof an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the sum of fifty dollars, other part and parcel of the said sum of five hundred dollars, above demanded.

Yet the said defendant hath not paid the several sums of money above demanded, or any or either of them, or any part thereof, to the said plaintiffs, but so to do, although often requested, &c., he hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiffs of five hundred dollars; and therefore they bring suit, &c.

And the said defendant, by Robert Haight, his attorney, comes and defends the wrong and injury when, &c., and says that he does not owe the said sum of five hundred dollars, above demanded, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against him; and of this he puts himself upon the country; and the said plaintiffs do the like, &c.

Therefore the issue aforesaid, in form aforesaid joined, is ordered by the said district court to be tried at the next term of the court, to be held at Utica, on the second Tuesday of July next.

But because the said issue was not tried at the said term, the process between the parties is continued to, and the said issue is ordered by the said district court, to be tried at the term of this court appointed to be held at Rochester, on the third Tuesday of May, in the year eighteen hundred and forty-seven; at which day, that is to say, on the third Tuesday of May, in the year eighteen hundred and forty-seven, in the said district court, before the judge thereof, at Rochester, came the parties aforesaid by their respective attorneys aforesaid; and the jurors of the jury duly summoned to try that issue being called, also come, and being duly chosen, tried, and sworn to try the said issue, upon their oaths do say, that the said defendant does not owe the said sum of five hundred dollars, or any part thereof, to the said plaintiffs, in manner and form as the said plaintiffs have above thereof complained against him.

Therefore it is considered that the said plaintiffs take nothing by their bill, and that the said defendant go thereof without day, &c.

Judgment signed September 8, 1847.

AURELIAN CONKLING, *Clerk.*

United States district court, northern district of New York.

THE UNITED STATES OF AMERICA
vs.
DANIEL H. BROMLEY.

Bill of exceptions.

NORTHERN DISTRICT OF NEW YORK, *ss.*

And afterwards, at the day and place within contained, to wit, at a stated term of the district court of the United States, in and for the

northern district of New York, held at the court-house, in the city of Rochester, in the said district, on the third Tuesday of May, one thousand eight hundred and forty seven, before honorable Alfred Conkling, judge of the said court, the aforesaid issue, so joined as aforesaid, came on to be tried by a jury of the body of the said northern district of New York, for that purpose duly empannelled; at which day came there as well William F. Allen, attorney for the United States of America, in and for the said district, who then and there prosecuted on behalf of the said United States, as the said Daniel H. Bromley, by Robert Haight, his said attorney; and the jurors of the jury aforesaid, empannelled to try the said issue, being called, also came, and were then and there, in due manner, chosen and sworn to try the same issue. And upon the trial of that issue, the said United States attorney, on behalf of the said plaintiffs, to maintain and prove the said issue on their part, called and offered—

Wallace Sherman, as a witness on the part of the said plaintiffs, who, being duly sworn, was examined by the counsel for the said defendant, touching his interest in said case; and on such examination testified that he resided at Albion, and knew what the suit was about. He had seen Kelsey, the steward of the packet boat Empire; that he, the witness, told the postmaster at Albion, that he saw a letter or letters handed to the steward, but where the steward carried the letters to he, the witness, did not know; that it was upon the information of the witness that the suit was commenced; that he went to Buffalo as a witness, and the cause was not called at that term; that he had consulted with the postmaster, about the suit, since last fall, and might have said a few words to Mr. Barton, the deputy marshal.

On being cross examined by the said United States attorney, on the question of interest, the witness testified that he gave no information, except as above stated; that he was subpœnaed to attend the court at Buffalo, and at Rochester, and his fees for attendance at Buffalo were paid; that when the witness came from Buffalo he told the postmaster that the trial had been put off until the then next June term; that he, the witness, did not know when the court would meet; and this conversation was what he meant and referred to when he said he had consulted with the postmaster since last fall; that he was a clerk in the post office at Albion when he gave the postmaster the information. The counsel for the defendant did, therefore, then and there object and insist that the said witness was interested in the event of the said suit, as the informant was entitled to one-half the recovery, and ought not to be examined in chief. And the said court did then and there overrule the said objection, and decide and declare, that the said witness was competent; to which opinion and decision the said counsel for the defendant did then and there except.

The said witness was, therefore, examined in chief by the said United States attorney, and testified, that he was clerk in the post office at Albion from about the middle of August, 1846, during all which time the mail was regularly carried under the authority of the post office de

partment, between Albion and Rochester, New York, daily. H. I. Sickles was postmaster at Albion; that he had seen the defendant, and knew him by sight; that he believed he was captain of the packet boat Empire, on the Erie canal, in 1845, and part [of] 1846; that the packet boat Empire, during the season of navigation, performed regular trips between Rochester and Buffalo; that Albion was on the canal between Rochester and Buffalo; that he had seen Kelsey, the steward of the boat; that he was steward of the boat while the defendant was captain; that he saw a letter or letters given to Kelsey in 1846, he thought in May; that it was while the defendant was captain, and while the boat was at Albion, Kelsey was the steward of the boat, which was going from Buffalo to Rochester; that he thought two letters were given to him, one by Brainard and one by Parmelee; that he did not know as any thing else was given to the steward; that he, the witness, was not far off; that he did not know whether both the letters were given to the steward at the same instant of time.

On cross examination by the counsel for the defendant, this witness testified that this was between 10 and 11 o'clock at night; the boat did not stop at Albion over fifteen minues; that on the occasion spoken of he and one White got on the boat; that he had seen the defendant on the boat Empire since that time; that he did not abandon the boat very early in 1846; that after the defendant quit Kelsey run the boat as captain; that he, the witness, was not acquainted with Brainard, who was a tobacco pedlar; Parmelee attended the bar at the Mansion House in Albion; the paper handed to the steward was folded in the shape and size of letters; he, the witness, did not know whether they were sealed or not; that Kelsey got on the boat after he took the letters; they did not contain over one sheet of paper each.

On a re-examination by the said United States attorney, the witness testified, that he saw the report of the case by the postmaster to the United States attorney. It is shown to and identified by the witness, who stated the report to be dated May 7, 1846.

William V. White was then called as a witness for the said United States, and testified that he resided at Brookport, and was at Albion in the spring of 1846, he thought in May, and stayed at Albion from dark until 10 or 11 o'clock the same night; and then went from Albion to Rochester in the packet boat Empire, of which the defendant was the captain.

That the last witness, Sherman, came down to the wharf to see the witness off. That he (the witness) did not see any thing handed to the steward, or any hand on the boat. That he arrived at Rochester about seven o'clock the next morning, and saw Kelsey, the steward, have something of paper, which he handed to a boy. That he did not see the size of the paper, or whether sealed or open. That he did not see from what part of his person the steward took the paper. That the boy to whom the paper was delivered belonged to the boat; he thought there was no more than one paper, and that he should think they were folded. That he did not notice any writing on the papers. That this was

almost half an hour after the boat arrived at Rochester. The said United States Attorney thereupon asked the said witness whether the said steward, when he gave the said papers to the boy, gave any directions to the boy in respect to said papers. And the said counsel for the said defendant did then and there object and insist that the said question was improper, and that the said witness ought not to answer the same. And the said court did thereupon then and there decide, that the said question was incompetent, and that the same should not be answered by the witness; to which opinion and decision the said United States Attorney did then and there except.

On a cross examination the said witness testified that he was with Sherman most of the time after nine o'clock of the evening of the transaction spoken of, until the packet boat left Albion. That it was between the first and fifteenth of May, 1846. That the defendant was on the boat as captain that night.

James Brainard was then called and sworn as a witness on behalf of the United States, and testified that in May, 1846, he was at work, pedling tobacco for Mr. Palmer; that he was at Albion every two weeks, and thought he was there in May; that he was there the fore-part of the week, but did not recollect the time of the month; that he recollected offering Kelsey a letter at Albion to carry to Mr. Palmer, his employer, at Rochester, and Kelsey would not carry it, and said he was not permitted to carry letters. That this was in front of the hotel at Albion, at 10 or 11 o'clock at night; that he (the witness) kept the letter and wrote an order on his employer for some tobacco, and gave it to Kelsey to carry; that he wrote it on a half sheet of paper, and wrote the paper half over, and tore off the residue. That he folded it over the width of the sheet, and then once at right angles with the first fold, and directed it on the outside to Mr. Palmer, at Rochester. That the order to Mr. Palmer was a request to send some tobacco to him (the witness) at Albion, by the boat Empire, or by the first boat; and the witness thinks the request was, to send it by the first boat; and this was the substance of the paper. That he did not give the steward any thing for carrying the letter. That he received the tobacco the next day. He found it at the hotel at Albion, when he came back from Berne Centre.

On cross examination this witness testified, that he supposed when he wrote that the boat Empire would be the first boat out of Rochester after the receipt of the order by Palmer. That he told Palmer to send the tobacco by the first boat; that he paid nothing for bringing the tobacco.

James H. Palmer was then called and sworn as a witness on behalf of the United States, and testified that he was the person of that name referred to in the testimony of the last witness, and had charge of the business of the firm at Rochester for whom Brainard was pedling tobacco in May, 1846. That he frequently received orders from Brainard by mail and otherwise; that the orders were all destroyed; that he

never sent tobacco to pedlars except upon orders, unless they requested it before they left Rochester.

On a cross examination he testified that he recollected sending tobacco by the defendant's boat in May, 1846, to Brainard.

William Parmelle was then called and sworn as a witness on behalf of the United States, and testified that in May, 1846, he attended bar for Mr. Hopkins, at Albion. That he did not recollect handing any paper or letter to Kelsey, to be carried by him, or for any other purpose; that he had offered letters to Kelsey to carry, and he refused to carry them; that he recollected seeing Brainard give a note to Kelsey, written on two-thirds of a sheet of foolscap paper, and folded in about the size of an ordinary letter, to be carried to Rochester.

On a cross examination the witness testified that the boat Empire brought the tobacco from Rochester for Brainard; and he (the witness) paid the steward (Kelsey) half a dollar for bringing it, which Brainard afterwards repaid him.

Said Kelsey was then called as a witness for the said United States, and testified that in May, 1846, he was steward of the Empire. The defendant was captain of the said boat; that he recollected the circumstances spoken of by Brainard and Sherman; that Brainard came with a letter, and he (the witness) refused to take it; and that he soon afterwards brought the order spoken of, which he (the witness) took, and when he arrived at Rochester, sent to Mr. Palmer, and received the tobacco and carried it to Albion, for which I received a half dollar, which was a perquisite of my own.

The said United States attorney thereupon rested the said cause; and the counsel for the defendant did then and there ask the said judge to direct the said jury that the said evidence did not establish a cause of action against the said defendant; and that the said defendant, upon the said evidence, was entitled to a verdict; and the said judge did thereupon then and there declare and decide, that the said evidence, so as aforesaid given, did not establish a cause of action against the said defendant, and that the said paper, carried and conveyed by the steward of the said boat, from Albion to Rochester, as aforesaid described by the witnesses, was not a letter or mailable matter within the meaning of the act of Congress, but was a paper having a different and distinct character of its own, and could be lawfully carried by the said steward of the packet boat aforesaid; and did then and there, for the reason aforesaid, direct the said jury to find a verdict for the said defendant. To which said opinion and decision the said United States attorney did then and there except; and the said jury did thereupon, in pursuance of the said opinion and decision, without leaving the box, find a verdict for the defendant.

And inasmuch as the said several matters so produced and given in evidence on the part of the said United States, and by their attorney aforesaid insisted upon as aforesaid as sufficient to maintain the said action, and the said several opinions and decisions of the said judge do not appear by the record of the verdict aforesaid, the said United

States attorney, on behalf of the said United States, did then and there propose the aforesaid exceptions to the opinions and decisions of the said judge, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said United States, according to the form of the statute in such case made and provided; and thereupon the said judge, at the request of the said United States attorney, did put his seal to this bill of exceptions, in pursuance to said statute, on the said eighteenth day of May, 1847.

A. CONKLING. [L. S.]

And the said United States, by their said attorney, hereupon say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is a manifest error, in this, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said Daniel H. Bromley against the said United States of America; whereas, by the law of the land, the said judgment ought to have been given for the said the United States of America, against the said Daniel H. Bromley; and the said United States of America pray that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

And the said Daniel H. Bromley, by Robert Haight, his attorney, says that there is no error either in the record and proceedings aforesaid, or in the giving of judgment aforesaid by the said district court of the United States, for the northern district of New York; and he prays that the said circuit court of the United States, for the second circuit and northern district of New York, before the aforesaid judges thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and the judgment aforesaid in form aforesaid given by the said court may be in all things affirmed, &c.

But because the said circuit court, before the aforesaid judges thereof now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before the said judges, until the Tuesday next after the third Monday in June next, at Canandaigua, in the said district, to hear the said judgment aforesaid.

At which day, in the said circuit court, before the judges aforesaid, at Canandaigua, came the parties aforesaid by their said respective attorneys. But because the said circuit court, before the aforesaid judges thereof now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before the said judges, until the third Tuesday of October next, at Albany, in the said district, to hear the judgment aforesaid.

At which day, before the judges of the said circuit court of the United States, at Albany, came the parties aforesaid, by their respective attor-

neys aforesaid; and whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid by the said United States for error assigned, being seen and by the said circuit court of the United States, before the aforesaid judges thereof now here, fully understood, and mature deliberation being thereupon had, it appears to the said circuit court, before the aforesaid judges thereof now here, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid.

Therefore it is considered that the judgment aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force and effect, the several matters above for error assigned in any wise notwithstanding.

Judgment signed this 18th day of November, 1848.

ANSON LITTLE, *Clerk*.

(*Endorsed.*)—Circuit court of the United States, in the second circuit and northern district of New York. Daniel H. Bromley ads. the United States. Judgment roll.

R. HAIGHT, *Def't's att'y*.

Filed November 18, 1848.